

97-84144-3

Texas Midland Railroad
Company

In the matter of the
valuation of the property...

[Philadelphia]

[1916]


97-84144-3

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BEFORE THE
INTERSTATE COMMERCE
COMMISSION

In the matter of the Valuation of the Property of
THE TEXAS MIDLAND RAILROAD COMPANY
Under Section 19-A of the Act of Congress, Entitled
"An Act to Regulate Commerce"
Approved February 4, 1887
and the Amendments and Supplements Thereto

Protest Against Said Tentative Valuations
made by
THE TEXAS MIDLAND RAILROAD COMPANY
Filed November 29, 1916

PRINTED BY THE
GENERAL SECRETARY, PRESIDENTS' CONFERENCE COMMITTEE
PHILADELPHIA, PA., DEC. 1, 1916
FOR THE INFORMATION AND CONVENIENCE OF THOSE INTERESTED

BEFORE THE
INTERSTATE COMMERCE
COMMISSION

In the matter of the Valuation of the Property of
THE TEXAS MIDLAND RAILROAD COMPANY
Under Section 19-A of the Act of Congress, Entitled
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BEFORE THE INTERSTATE COMMERCE
COMMISSION.

In the Matter of the Valuation of the Property of
the Texas Midland Railroad under Section 19-A
of the Act of Congress, Entitled "An Act
to Regulate Commerce," Approved
February fourth, eighteen hundred
and eighty-seven, and the
Amendments and Supple-
ments Thereto.

PROTEST AGAINST THE TENTATIVE VALUATION
OF ITS PROPERTIES, BY THE TEXAS MIDLAND
RAILROAD.

TO THE INTERSTATE COMMERCE COMMISSION:

A notice, of date October 21, 1916, signed by the Secretary of the Interstate Commerce Commission was served on the undersigned Texas Midland Railroad (hereinafter designated and referred to as the "carrier"), stating in substance, among other things, that the Interstate Commerce Commission has completed, under the Act of March 1, 1913, a tentative valuation of the Texas Midland Railroad, and that the valuation placed upon the property of the carrier as of June 30, 1914, is as set forth in said notice. The carrier is required by said notice to file with the Inter-

Notice of
Tentative
Valuation
served.

state Commerce Commission within thirty days from the first day of November, 1916, any protest which it may desire to make to said valuation or any part thereof.

Reports.

The said notice states that "the tentative report is served as a part of this notice," and "that detailed engineering, accounting and land reports have already been furnished to the Texas Midland Railroad and are on file in the office of the Interstate Commerce Commission in Washington subject to examination by any interested parties."

"Alleged
Tentative
Valuation."

For brevity the notice and other documents above mentioned will be referred to hereinafter as the "alleged tentative valuation."

Protest.

Now comes the carrier within thirty days from November 1, 1916, and files this its protest against said alleged tentative valuation, alleging and charging that by reason of the many errors therein the same does not comply with the law.

The carrier protests against said alleged tentative valuation and in support thereof alleges:

1.

Value not
found.

That the said alleged tentative valuation does not show, or purport to show the value of the property of the carrier, or of the property owned or used by the carrier, and that the documents served upon the carrier, and the detailed engineering, accounting and land reports which are referred

to in said notice do not, either separately or collectively, constitute the tentative valuation required by the Act.

2.

The documents served upon the carrier and the detailed engineering, accounting and land reports referred to therein do not constitute, either separately or collectively, the tentative valuation required by the law. Law not complied with.

The said documents and reports, neither separately nor collectively, show or purport to show the value of the property owned or used by the carrier, nor can such value be determined therefrom; nor do such documents and reports, either separately or collectively, constitute the tentative valuation required by the law, nor do they comply with the law.

3.

The alleged tentative valuation fails and omits to ascertain and report the original cost to date, the cost of reproduction new or the cost of reproduction less depreciation of the property *used* by the carrier for its purposes as a common carrier, but which is *not owned* by it, and it fails and omits to ascertain and report the value of the carrier's right so to use such property, and it fails and omits to allow or include therein any sum or amount whatsoever on account thereof. Cost values of property used but not owned omitted.

NOTE.—Italics ours.

The omitted property above referred to and which is so *used* by the carrier but which is *not owned* by it includes the following:

14 miles of
joint
railroad.

(a) About fourteen miles of railroad extending from Commerce, Texas, to Greenville, Texas, which the carrier has continuously for many years last past used and still uses for its purposes as a common carrier jointly with the St. Louis Southwestern Railway Company of Texas under and pursuant to an agreement with that company which is the owner thereof subject to the right owned by this carrier so to use the same;

Joint
passenger
terminals
at Paris.

(b) Passenger terminal facilities at Paris, Texas, which the carrier has continuously for many years last past used and still uses for its purposes as a common carrier jointly with the St. Louis, San Francisco & Texas Railway Company pursuant to an agreement with that company which is the owner thereof subject to the right owned by this carrier so to use the same;

Joint
passenger
terminals
at Ennis.

(c) Passenger terminal facilities at Ennis, Texas, which the carrier has continuously for many years last past used and still uses for its purposes as a common carrier jointly with the Houston & Texas Central Railroad Company pursuant to an agreement with that company which is the owner thereof subject to the right owned by this carrier so to use the same.

Land for
industrial
tracks
omitted.

(d) The lands upon which the portions of certain industrial tracks, named below, which are located

NOTE.—Italics ours.

on the owned right of way of this carrier are included. The lands upon which the remaining portions of such tracks are located and operated under grants of right by the owners thereof to this carrier are not included. The tracks above referred to are the following:

- (1) At Ennis—3 tracks, Ennis Cotton Oil Company.
Track, Ennis Compress Company.
Track, City Light Plant.
Track, New Cotton Oil Company.
Track, Elevator.
Track, Ice Plant.
- (2) At Schley—Spur track.
- (3) At Sand Lake—Spur track.
- (4) At Talbot—Spur track.
- (5) At Trinity—Spur track.
- (6) At Parvin Park—Spur track.
- (7) At Kaufman—Compress track.
- (8) At Terrell—Oil Mill track.
Ice Plant track.
Compress and City tracks.
Flour Mill track.
Asylum Spur.
- (9) At Greenville—Refinery track.

About six hundred feet of the portion of this track off the owned right of way of this carrier is operated exclusively by this carrier and the system of tracks connecting therewith are used by this carrier jointly with the Missouri, Kansas & Texas

Railway Company of Texas and the St. Louis Southwestern Railway Company of Texas.

- (10) At Greenville—Oil Mill track.
New City track.
- (11) At Commerce—Oil Mill track.
Flour Mill track.
- (12) At Cooper—Lumber Spur.
Light Plant Spur.
- (13) At Atlas—Rock Quarry Spur.
- (14) At Paris—Oil Mill track.
Flour Mill track.
Rodger-Wade Furniture Co. track.
Compress track.
Ice Factory track.

On Valuation date, and long prior thereto, this carrier was and still is the owner of the right to use and occupy all the land, upon which said industrial tracks are located, for its purposes as a common carrier and for the use, operation and maintenance of said railroad tracks.

(e) The telegraph line upon the right of way of this carrier consisting of three wires from Ennis to Kaufman, four wires from Kaufman to Terrell, three wires from Terrell to Greenville and three wires from Commerce to Paris. There is also a telegraph line on the right of way of the St. Louis Southwestern Railway Company of Texas, jointly used by this carrier, and that carrier between Greenville and Commerce consisting of three wires. This forms a continuous telegraph line from Ennis to Paris. This company, on valuation date, and for a long time prior thereto, used and still has the exclusive use of

Telegraph
lines.

one wire from Ennis to Paris. The Western Union Telegraph Company at all such times had and still has the exclusive use of all the remaining wires;

The work of constructing all of the telegraph line on this carrier's right of way was done at the expense of this carrier, and the work of installing the three wires on the telegraph line located on that part of the right of way of the St. Louis Southwestern Railway Company of Texas, jointly used by this carrier and that carrier, was done at the expense of this carrier, the materials, instruments and supplies therefor were furnished by the Western Union Telegraph Company.

The work of keeping in repair and maintaining such telegraph line and all parts thereof is done at the expense of this carrier, the material, instruments and supplies therefor are furnished by the Western Union Telegraph Company.

4.

The alleged tentative valuation fails and omits, in some instances, to ascertain and report property of the carrier *owned by it solely for carrier purposes*, for the reason, as this carrier understands, that the same was not actually being used for carrier purposes on valuation date, and it fails and omits to ascertain and include therein the original cost to date, the cost of reproduction new, or the cost of reproduction less depreciation of such owned properties.

NOTE.—Italics ours.

The properties above referred to include the following:

A tract of about forty acres of land at Enloe, owned by the carrier for its purposes as a common carrier, to wit: For the purpose of obtaining ballast therefrom to be used in the operation and maintenance of its railroad.

For ballast supply.

A tract of about 35.87 acres of land at Ennis, owned by the carrier for its purposes as a common carrier, to wit: For the purpose of extensions and improvements.

For extensions and improvements.

5.

The alleged tentative valuation fails and omits to ascertain and report in detail, or in any other way, an analysis of the methods by which the original cost to date, the cost of reproduction new or the cost of reproduction less depreciation of the properties of the carrier which purport to be included and reported upon were obtained, and it fails and omits to ascertain and report the reasons for the differences in such cost figures.

Methods not reported.

6.

The alleged tentative valuation fails and omits to ascertain and report, separately or otherwise, the other values and elements of value of the property of the carrier.

The carrier alleges, and at the proper time it will submit proof to the Interstate Commerce

Commission, that there are other elements of value in its property, which the law requires the Commission to ascertain and report, and that among others, there is the value due to the fact that the carrier's railroad is a going concern, having good connections with other carriers by rail, well located stations for the receipt and delivery of freight and passengers, a railroad constructed on a favorable grade system as compared with other lines in the vicinity and many other conditions, qualities and attributes which give it value as a railroad.

The State of Texas for many years last past has taxed, and now taxes, the carrier's property on account of intangible elements of value therein on more than \$550,000.00.

7.

The alleged tentative valuation fails and omits to ascertain and report the reasons for any differences between the other values and elements of value required by the law to be separately reported and each of the alleged cost values, and fails and omits to state any reasons why no other values or elements of value were found to exist.

The carrier shows that, in accordance with a request from the Division of Valuation, it did, in March, 1916, make a statement in writing which was sent to the Director of the Division of Valuation setting forth certain claims made by it and giving supporting facts, respecting intangible values,

Reasons for differences not given.
Claim as to other values, etc., made.

coming within that portion of sub-division "First" of the Valuation Act which is as follows:

"The commission shall in like manner ascertain and report separately other values, and elements of value, if any, of the property of such common carrier, * * *."

And that the carrier has never had any opportunity to present evidence bearing upon its said claim to the effect that its property does contain other values and elements of value.

8.

Carrier land
classed as
non-carrier.

The alleged tentative valuation purports separately to show that the carrier owns 75.87 acres of land and erroneously reports that the same and the improvements and structures thereon are not held for transportation purposes. The carrier states that the property so referred to is owned and held by it for its purposes as a common carrier.

The alleged tentative valuation fails and omits to show an analysis of the methods of valuation employed with respect to such property, and fails and omits to show the true present value thereof, which this carrier avers is not less than \$16,300.00, instead of \$8,619.40 set opposite to the reference to said land in the said notice.

9.

Arbitrary
assumptions.

The alleged tentative valuation has been prepared upon a series of unsupported and arbitrary

assumptions, some of which are in principle inconsistent with the others, and some of which are contrary to both law and fact. For example:

(a) If the alleged tentative valuation is intended to contain either the cost of reproduction or the present cost of acquisition of the carrier's lands, rights of way and terminals, it is based upon the unjustified and arbitrary assumption that such lands may be acquired at the normal acreage value for general, not including railway, purposes of the adjacent and adjoining lands and without any payment on account of improvements. As to land costs.

The figure \$236,689.65, reported with respect to land, does not represent any fact required by the Valuation Act to be ascertained and reported.

The alleged tentative valuation does not ascertain or report, or purport to show, either the cost of reproduction or the present cost of acquisition of the carrier's land or any part thereof and does not report or purport to show as to said lands, or any part of the same, the present cost of condemnation, or damages, or the expense of acquisition, and the carrier states that with respect to the valuation of its carrier lands, the alleged tentative valuation fails to comply with the law in any particular and wholly disregards the same.

(b) The unjustified and arbitrary assumption has been made that certain lands of the carrier which were actually acquired and are now owned and held As to classification of land.

for carrier purposes were not so acquired and are not now so owned or held. (The 75.87 acres mentioned in paragraph 8 is here referred to.) This assumption has been made without consultation with the carrier and without inquiry of the carrier concerning the facts or as to its purpose in acquiring and holding such lands.

As to time necessary to acquire land. (c) The unjustified and arbitrary assumption has been made that in reproduction the right of way and terminal lands of the carrier will have been acquired on the date when construction begins, and that no time would be required to purchase or condemn the same in advance of the commencement of the work of construction, and no interest on the reproduction cost of land is included or allowed in the alleged tentative valuation.

As to time necessary to construct railroad. (d) An unjustified and arbitrary assumption has been made as to the length of time required to construct or reproduce the carrier's railroad, and the alleged tentative valuation is based upon a much shorter time than that justified or supported by the experience of all carriers in the construction of similar properties, or by the actual experience of this carrier in the construction of its properties as shown in paragraph 16 hereof.

As to completion. (e) An unjustified and arbitrary assumption has been made, that when the physical parts of a railroad have been connected together, the construction of the railroad is then complete, and that no other

expenditure for construction will be necessary. This assumption is contrary to the experience of all other carriers and is contrary to the experience of this carrier in the construction of its properties.

(f) The unjustified assumption has been made As to second-hand equipment. that certain equipment of the carrier would be bought second-hand in case of reproduction.

(g) If the alleged tentative valuation is intended As to land cost in reproduction of the railroad. to contain a statement of the cost of reproduction new of the carrier's railroad property as a whole, then it has been arbitrarily assumed, contrary to the fact, that the right of way and terminal lands of the carrier could be acquired on the basis of the average of the normal value for general, not including railway, purposes of the rural and urban lands in the vicinity of its line of railroad, and that in reproduction nothing would have to be paid on account of improvements, severance or other damages, the cost of acquisition, or on account of the element of value due to the fact that such lands are well adapted, fit, needed and demanded for railroad use.

(h) It has been assumed without justification and As to what is cost of reproduction. contrary to the fact that the true and entire cost of reproducing the carrier's railroad in actual operation can be determined by ascertaining only the cost of the existing pieces of property other than land and by adding thereto the average of the normal value for general, not including railway, purposes

of the rural and urban lands through which the railroad extends without including in or adding thereto any sum or amount whatsoever to cover improvements, severance, or other damages, expenses of acquisition, or that element of value which exists because such lands are well adapted, fit, needed, and demanded for railroad purposes.

(i) It has been assumed without justification and contrary to the facts:

(1) That no assessments for public improvements would have to be paid, notwithstanding the fact that the carrier has actually paid, and in case of reproduction would be required under existing law to pay, large amounts on account thereof.

(2) That the cost of materials and supplies which were actually on hand on valuation date is not a part of the cost of reproduction new,—and the same is not represented by any figure, or in any manner taken into account, in the alleged tentative valuation.

(3) That the working capital actually on hand on valuation date is not to be included in the cost of reproduction new,—and the same is not represented by any figure, or in any manner taken into account, in the alleged tentative valuation.

(4) That no allowance on account of contingencies is properly to be included in the cost of reproduction new,—and there is no allowance therefor included in any figure in the alleged tentative valuation.

As to
assessments.

As to
materials
and supplies.

As to work-
ing capital.

As to
contingencies.

(5) That nothing should be allowed to cover the cost of developing the physical property of the carrier in its earlier stages after its parts have been assembled. The carrier states that the alleged tentative valuation is based upon, and the result of, many other unjustified or arbitrary assumptions, and that many erroneous methods have been employed in making the same.

As to devel-
opment.

Other
erroneous
assumptions
and methods.

10.

The alleged tentative valuation does not, in the attempted setting forth of the cost of reproducing the property of the carrier, nor in the details of the alleged tentative valuation thereof, include, or take any account of materials and supplies on hand or of their cost or value which on valuation date was found by the Commission to be \$96,857.19.

Materials
and supplies
omitted.

11.

The alleged tentative valuation reports certain *concessions* made by Mrs. Green and her son (the actual owners) which amount in the aggregate to \$989,124.79, and it is said, in substance, that these are "not perhaps properly donations," but no part thereof is included in the original cost to date of the property, although the "100 box cars given by Mrs. Green \$88,681.17" are included in the cost of reproduction new and cost of reproduction less depreciation.

Concessions
omitted from
original cost.

NOTE.—Italics ours.

Working capital and other costs omitted.

The alleged tentative valuation takes no account of, and makes no report upon, working capital, or upon the cost of developing the property to its present condition as an operating railroad after the assembling of its physical parts.

Money and other current assets omitted.

The alleged tentative valuation takes no account of, and makes no report upon, the amount of money and other current assets of the carrier actually on hand on valuation date. The money which the carrier had on hand on valuation date, June 30, 1914, was not less than \$17,000.00, and that amount was less than the average amount on hand during the last preceding fiscal year, which average was not less than \$100,000.00. Its other current assets on that date were about \$40,000.00.

Assessments omitted from reproduction cost.

The alleged tentative valuation fails and omits to include as a part of the cost of reproducing the property the assessments for public improvements that would have to be paid if the property were to be reproduced as of the date of valuation, notwithstanding that prior to said date the carrier actually paid \$9,826.78 on account of such assessments and notwithstanding, in case of reproduction on that date, it would be required to pay at least that amount on account of such assessments.

The engineering report or the alleged tentative valuation does not fully or accurately inventory or list all of the property owned or used by the carrier, and many items of property are omitted from the alleged tentative valuation, as for example:

(a) The railroad extending from Commerce, Texas, to Greenville, Texas, mentioned in sub-division (a) of paragraph 3 hereof.

(b) The passenger terminal facilities at Paris, Texas, mentioned in sub-division (b) of paragraph 3 hereof.

(c) The passenger terminal facilities at Ennis, Texas, mentioned in sub-division (c) of paragraph 3 hereof.

(d) The land referred to in sub-division (d) of paragraph 3 hereof.

(e) The telegraph properties referred to in sub-division (e) of paragraph 3 hereof.

The unit prices set forth in the engineering report are, in many instances, inadequate and less than those that would have to be paid in reproducing the property, as for example: Unit prices.

Account	Unit	Number of Units	Prices used by Commission	The carrier claims that the prices should be not less than the following
3—Clearing.....	Acre.....	353.63	\$25.	\$35.
Grubbing.....	"	41.72	40.	52.
Earth excavation.....	Cu. Yd.	664,216	.15	.18
" embankment.....	"	1,873,723	.135	.18
Hard pan.....	"	158,092	.24	.35
Loose rock.....	"	1,473	.35	.43
Solid rock.....	"	17,544	.67	.97
6—Pile trestles.....	Lin. Ft.	23,320	11.80	20.
Concrete.....	Cu. Yd.	198	9.10	15.
"	"	750	11.30	15.
"	"	74	8.90	15.
"	"	96	10.90	15.
8—Ties—Zinc treated....	One.....	65,016	.56	.68½
9—Rail Relaying.....	Gr. Ton	1,255.097	24.	29.50
11—Ballast Cinders.....	Cu. Yd.	24,956	.15	.36
" Sand.....	"	150,926	.15	.36
" Stone.....	"	9,372	.65	.80
" Burnt Clay.....	"	151,446	.82	1.30
12—Track Laying & Surf.				
Ballasted track.....	Mile.....	129.047	780.	1,185.
Earth track.....	"	18.491	1000.	1,310.
Installing turnouts.....	One.....	265	20.	50.
15—Crossings and signs				
Earth work.....	Cu. Yd.	29,166	.15	.18
Rock excavation.....	"	75	.65	.97
51—Steam locomotives....	One.....	17	Del. Price	At least 1% should be added to delivered price, for setting up to meet experience of the carrier.
55—Motor passenger cars complete.....	One.....	2	Del. Price	At least 1% should be added to delivered price, for setting up to meet experience of the carrier.
57—Locomotive crane.....	One.....	1	5,831.	8,000.

The minimum unit prices which the carrier claims should have been applied, as hereinabove stated, relate to valuation date, June 30, 1914. In order to revise and correct the valuation of the carrier's property as of June 30, 1914, so as to disclose a valuation thereof as of June 30, 1916, all extensions, improvements and other changes in the condition of the property between said dates must be taken into consideration and unit prices and land values applicable as of June 30, 1914, as to most of the details of such property should be substantially increased, and as to some of such details should be greatly increased.

16.

The engineering construction program for reproduction is based upon too short a period of time. The construction period required to reproduce the property of this carrier,—exclusive of the time required for the development of its physical property,—would necessarily require and cover a period of not less than thirty (30) months instead of eighteen (18) months adopted by the commission as the basis in said alleged tentative valuation, and a large amount of additional time over and above said thirty (30) months would necessarily be required in such reproduction after the commencement of the operation of some revenue trains thereon, in order to complete and develop such physical property to its condition on valuation date.

Prices higher
in 1914 than
in 1916.

Time for
reproduc-
tion.

Overhead
costs
claimed.

In the alleged tentative valuation the amounts included in the overhead accounts, such as engineering, interest during construction, organization, general officers and clerks, law, and taxes are entirely inadequate and too low, and the carrier alleges that in the cost of reproduction new, and in the cost of reproduction less depreciation there should be included:

(a) On account of engineering (Account 1) not less than \$126,700.00; ✓

(b) On account of organization expenses (Account 71) and the cost of obtaining money, such as commissions, syndicating, banking and other expenses (not included in interest during construction, Account 76) not less than 1% on the total amount of money required to reproduce the property.

(c) On account of general officers and clerks (Account 72) not less than \$65,550.00;

(d) On account of law (Account 73) not less than \$18,000.00;

(e) On account of taxes (Account 75) not less than \$12,000.00;

(f) On account of interest during construction (Account 76) not less than \$328,445.00, even when calculated upon the assumption that the sum of the reproduction figure and the land figure as reported in the alleged tentative valuation is the correct and full amount of the cost of reproduction of the carrier's property, whereas in truth and in fact the cost of reproduction thereof on valuation date was greatly

in excess thereof, as hereinafter shown, and the interest during construction on the cost of the carrier's railroad property on valuation date, and which should have been included in the cost of reproduction new and in the cost of reproduction less depreciation was not less than \$454,828.00.

The alleged tentative valuation does not include, ^{No allowance to cover contingencies.} or purport to include, in the cost of reproduction any sum or amount whatsoever to cover contingencies, and the carrier claims that, in addition to the allowances made on account thereof in the unit prices and other figures specifically claimed by the carrier and above set forth in this protest, there should be allowed and added not less than \$200,000.00 to cover contingencies in order to show the cost of reproduction new of the carrier's railroad property as of valuation date.

The cost of reproduction new figures in the report ^{Reproduction cost claimed by carrier.} are inadequate and insufficient to cover such cost. The properties of the carrier could not possibly be reproduced new under any rational or reasonable engineering program or at all, at a cost represented by the figures reported, and the cost of reproduction new of the carrier's railroad property, inclusive of land, on valuation date was not less than \$5,195,149.00.

The above figure includes on account of carrier land \$439,300.00, and also includes \$140,475.00 on

5195149 439300

account of appreciation of certain elements of the property which have become more valuable than they would be if new. This carrier also owned on valuation date property held for purposes other than those of a common carrier of the then present value of not less than \$13,000.00.

19.

No deferred
maintenance.

No depre-
ciation.

The cost of reproduction less depreciation figures contained in the alleged tentative valuation are grossly inadequate and very much too low. The cost of reproduction less depreciation of the properties of the carrier on the date of valuation should be far in excess of the figures reported and, inasmuch as on valuation date all deterioration in the physical parts of the carrier's property had been taken care of by proper replacements when needed, and as there was no deferred maintenance, and as the property was well maintained and in good and appropriate condition in all its parts, the cost of reproduction less depreciation should not be less than the cost of reproduction new.

20.

Apprecia-
tion.

The alleged tentative valuation fails and omits to ascertain and report any *appreciation* in value by reason of change in condition of any item or items of physical property and fails and omits to take any account of such appreciation in value, or in the cost

NOTE.—Italics ours.

of reproduction new, or in the cost of reproduction less depreciation of any item of physical property, or of the property as a whole.

There are many items of the carrier's property, such as embankments, cuts, fills, etc., which have actually appreciated in value by reason of age and use alone, as well as by reason of expenditures made, and, on valuation date, the same were better and of greater value than they would have been if new, and of greater value than the cost of reproduction new thereof, and such appreciation should be taken account of in said engineering report and in said alleged tentative valuation.

The carrier's roadbed is well maintained, old and settled, and has appreciated in value above the cost of reproducing it new, and it is actually of much greater value than a new roadbed would be, and such appreciation in value should be taken into account in the report.

There are items of the carrier's property, other than those mentioned, which have an appreciated and greater value than the cost of reproducing them, and the carrier protests against the engineering report and the alleged tentative valuation because the same fail and omit to take account of any such appreciation in value of any of its properties.

The alleged tentative valuation fails and omits to include in the cost of reproduction new, or in any manner to take into account or allow, any cost of excess maintenance which would be necessary and

required,—in case of the reproduction or reconstruction of the carrier's properties,—between the time of the original completion of roadbed and track in a new condition and the time when the same reached the safe and settled condition which actually existed on valuation date. The expenditures here referred to are not maintenance charges or properly a part of operating expenses, but they are a part of, and should be included in, the cost of reproduction new. The carrier claims that in its railroad property the cost thereof on valuation date was not less than \$140,475.00.

21.

Deductions
for depreciation
unwarranted.

The amounts of depreciation in the value of the carrier's properties as set forth in the report, and which are deducted from cost of reproduction new in the determination of the cost of reproduction less depreciation reported are, and each of them is erroneous and wholly without warrant, either in law or in fact. The methods followed for determining the amount of the depreciation set forth in the report are contrary to established rules of law, to economic law and to fair and just principles, and the results had thereunder cannot be sustained.

22.

No definition
of depreciation.

Neither the engineering report, nor any part of the alleged tentative valuation, furnishes any definition of what is meant by the term depreciation

as it is used in the Valuation Act, and there is no statement anywhere as to the use that is to be made in any valuation of the carrier's properties, of the amount of the depreciation reported to exist.

The alleged tentative valuation does not contain any report or finding as to whether or not the property of the carrier is well maintained in an appropriate operating condition.

The carrier, therefore, protests against the excessive amount reported as depreciation, and also against the publication of the alleged tentative valuation, and against its approval by the Commission because of the inference which will be drawn therefrom that the property of the carrier is not maintained in an appropriate, suitable, or proper operating condition.

23.

The methods for establishing depreciation as reported in the tentative valuation are inappropriate, unreasonable, unfair and contrary to law. Among other objections to such methods the following are now stated:

(a) The fact that the railroad property is a continuing property has been ignored.

(b) There has been an erroneous assumption that the normal condition of each physical item of railroad property is one of absolute newness, and that any departure from such newness is depreciation.

(c) There has been an erroneous assumption that by depreciation is meant the loss in monetary value of the *separate* physical items of the railroad that would exist if the railroad was *dismantled*, and the separate physical items sold.

(d) There has been a confusion of the cost of maintaining a railroad by repairs and replacements as a mere cost of operation, with a loss in capital or investment. There has been a confusion of physical deterioration, which as a mere operating expense is being constantly overcome, as it is necessary to preserve the value and efficiency of the property, with an actual existing depreciation that causes a loss in value.

(e) There has been a confusion of depreciation accounting under a proper classification of operating expenses, with actual existing depreciation, which results in loss of capital or investment.

(f) Depreciation due to alleged present and future obsolescence and inadequacy has been erroneously deducted in determining cost of reproduction less depreciation.

(g) The depreciation reported is a speculation, being based first upon an estimate as to the present age of the plant unit, and second upon an unsupported conjecture as to its normal and remaining service life.

(h) Depreciation has been determined upon the basis of an assumed normal service life, resulting

NOTE.—Italics ours.

in an unjust loss of the carrier's capital or investment, for the methods followed ignore entirely the legal and economic fact, that when the service life of an item of property, however long or short it may be, has expired, that the carrier has the right to replace it as a cost of operating the property, and that no loss of capital investment or value results therefrom.

(i) In the determination of depreciation there has been entirely ignored the legal and economic right of the carrier to fully maintain its property out of earnings and to charge the cost of such maintenance to the cost of operation.

(j) This carrier's property, on valuation date and for a long time continuously next prior thereto, was and is well maintained in an appropriate operating condition, and there existed therein no deferred maintenance. The alleged tentative valuation fails and omits to ascertain and report that the property of this carrier has been, or is being, properly maintained and fails and omits to ascertain and report that this carrier had not neglected or failed properly to maintain its property.

(k) Depreciation has been erroneously determined, not only with respect to age, but by erroneously applying thereto what is known as the "straight line" method, whereby the results obtained are arbitrary and without any support in fact.

(l) The assumed life periods used in the report are in many instances entirely erroneous, and not in accord with the experience of the carrier or of carriers generally.

(m) The economic fact has been ignored that deterioration in varying degrees in the plant units of a railroad will occur during the construction of a new railroad and that a railroad when new and first ready to begin operating is not new in each and all of its parts. The report erroneously assumes that each and every part was new when the railroad was first completed and to the extent of a departure from such newness each plant unit is depreciated, and no allowance is made to the carrier in the cost of reproducing its property for the cost of overcoming the deterioration actually and necessarily accruing in the construction and in the reproduction of the property, and which under the theory of depreciation adopted in the alleged tentative valuation, would be an actual cost of reproducing the property just as it was an actual cost in its construction.

However, in ascertaining the cost of reproduction less depreciation of this carrier's equipment which it purchased second-hand, it was erroneously assumed that a second-hand price would be the cost of reproduction new thereof and then a deduction was made from such second-hand price in order to secure the cost of reproduction less depreciation.

(n) Units of composite property,—such as the track, the life of which is continuous and the cost of replacing its various parts as their service lives expire is a mere cost of its maintenance,—have been divided into their component parts and each part separately depreciated by the "straight line" method on the basis of age and an assumed service life, resulting in an excessive amount of depreciation.

(o) The cost of reproduction less depreciation reported as to certain items of equipment was obtained upon the unwarranted assumption that the property could be or would be reproduced out of used and worn or second-hand items.

(p) The economic fact that a composite unit of railroad property can be maintained indefinitely at not less than its value new by continuous replacement of its parts is ignored. The fact that this carrier actually has so maintained and economically must continue to so maintain such composite units until by reason of inadequacy or obsolescence it becomes necessary to replace them is likewise ignored.

(q) The accrued deterioration in the plant units of the carrier's railroad due to age, and measured by the "straight line" method, and which could not be economically overcome on valuation date, has been erroneously assumed to be actual existing depreciation on that date, and the amount of same deducted from cost new.

(r) The alleged tentative valuation fails and omits to take into account or give any weight to the fact

that the carrier's property is well located, planned and constructed or that it is a going concern earning money in excess of its taxes and operating expenses. This carrier avers that the fact that its property is such a going concern constitutes an element of value, more than sufficient to offset the amount of accrued deterioration which existed in some elements thereof on valuation date.

24.

Fails to
comply with
the law as to
land.

The land report or the alleged tentative valuation does not state in detail and separately from improvements, the original cost of the lands, rights of way and terminals owned or used by this carrier for its purposes as a common carrier, ascertained as of the time of dedication to public use, and does not correctly report the present value of the same, and does not separately, or otherwise, report or purport to show the original or present cost of condemnation and damages, or of purchase, in excess of the original cost or present value of such lands, rights of way and terminals.

25.

Actual
present value
not reported.

The actual present value of the carrier's lands, rights of way and terminals owned or used by it for its purposes as a common carrier has not been ascertained and reported. The figures reported as present value are greatly below the true present value of such lands, as of valuation date.

26.

The alleged tentative valuation fails to ascertain or report the present cost of acquiring the lands of the carrier. It does not comply or purport to comply with the plain letter and intent of the law that there must be ascertained and reported, in connection with land, the original and present cost of its condemnation and damages, or of purchase, in excess of its original cost and present value.

Land costs
not reported.

The figures reported as representing the present value of carrier's rights of way and terminal lands are not only much less than the true present value of same, but are in many instances much less than the actual cost of such lands incurred long ago, and when the value of all lands in the vicinity were much less than they were on the date of valuation, and said reported figures are much less than the amount which on valuation date would have been necessarily expended to acquire the same or similar lands.

Figures too
low.

27.

There are many errors in the methods and principles which were employed and adopted for the determination of the alleged present value of the carrier's lands. Among these this carrier now points out the following:

Erroneous
methods and
principles
applied.

(a) The present value of the carrier's lands has been limited to the estimated acreage value, lot, parcel or other unit of value for general, not including

Value
limited to
estimated
value of
similar
land.

railway, purposes, of the adjoining or adjacent lands, and takes no account of the true value or actual cost to acquire the right of way, station grounds and other lands of the carrier. The actual present value of carrier's lands on the date of valuation is largely in excess of the figures reported.

Elements
omitted.

(b) In ascertaining the alleged present value of the carrier's lands no consideration was given to the rights which the carrier acquired, and had to acquire, in order to construct its railroad, and which rights are not measured by the value for general purposes of a similar area of land contiguous to the railroad; nor was any consideration given to the damages which the carrier paid, and had to pay, to the owners of the lands contiguous to its railroad by reason of the decrease of the rights of such owners and the increase in the property rights of the carrier; nor was any consideration given to the effect on the value of the contiguous lands by reason of its severance by carrier's purchase or acquisition, such as the cutting off of best means of access, interference with a water supply, and such as actual damages to buildings; and other property because of the proximity of the railroad to same. Not only was no consideration given to these or to similar items of actual expenditures made, but none was given to any estimate of similar expenditures that would have to be made in the present acquisition of carrier's lands.

(c) The alleged tentative valuation does not take into account, or give any consideration whatever, ^{Cost of acquisition, not reported.} to the actual cost of acquisition of the carrier's lands, or to the present cost of acquiring same.

(d) The alleged tentative valuation gives no consideration, in the determination of the alleged present ^{Special adaptation omitted.} value of the carrier's lands, to the fact that in many instances the carrier has paid, and has been compelled to pay, larger sums for particular parts of its right of way than other similar lands could have been secured for in the same vicinity, because of their peculiar value and special advantage that such particular right of way or other lands afforded the carrier in the construction of its railroad, or in its operation, or in both.

(e) In the determination of the alleged present ^{Manner of severance} value of the carrier's lands, no consideration has ^{ignored.} been given to the angle, or manner, or grade at which the carrier's right of way crosses the contiguous lands, although such angle, or manner, or grade at which the carrier's right of way crosses the contiguous land was an important feature in the determination of the cost of the right of way at the time it was acquired, and must now be an important feature in the determination of its present value.

(f) In the determination of the alleged present ^{Experience of carriers} value of the carrier's lands the report gives no ^{ignored.} consideration to the recent experiences of carriers gen-

erally in the acquisition of carrier lands in the various sections of the country, although the carriers have collected and offered statements of such experiences, which show the amounts which the carriers have paid, must pay and do pay, in acquiring carrier lands in comparison with the value of similar lands for general purposes.

(g) In the determination of the alleged present value of the carrier's lands the report gives no consideration to the actual damages paid by the carrier because of the removal of or injury to any buildings, or other structures, and gives no consideration to the severance damages actually paid by the carrier because of the injury resulting to the contiguous land. Such damages actually paid should be taken as a minimum and a guide to the much greater amount of damages that necessarily would have to be paid, in the present acquisition of its lands, if carrier's railroad was to be reproduced, and its lands acquired on the date of valuation.

(h) The acreage or quantities of land contained in the alleged tentative valuation are too small and not in accordance with the facts.

(1) There has been omitted not less than 20.56 acres of land used by the carrier for its purposes as a common carrier made up principally of areas within highway and street limits in addition to the areas in streets and alleys which have been vacated and which are used by the carrier and referred to in the alleged tentative valuation.

Improvements and damages ignored.

Acreage omitted.

Street areas omitted.

(2) There has been omitted all of the right of way and terminal lands used by this carrier for its purposes as a common carrier but which are, subject to this carrier's right to use the same, owned by other carriers, to wit:

The right of way for about fourteen miles of railroad between Commerce, Texas, and Greenville, Texas, referred to in sub-division (a) of paragraph 3 hereof, and the lands used for passenger terminals at Paris, Texas, referred to in sub-division (b) of paragraph 3 hereof, and the lands used for passenger terminals at Ennis, Texas, referred to in sub-division (c) of paragraph 3 hereof, and the lands used for industrial tracks referred to in sub-division (d) of paragraph 3 hereof.

(i) In the classification of the lands of the carrier, as between carrier and non-carrier lands, the report omits and fails to include as carrier lands 75.87 acres of land which the carrier on valuation date owned and held for its purposes as a common carrier, and the same has been erroneously reported as non-carrier lands.

(j) The notice of said alleged tentative valuation served on this carrier contains this statement:

"Land—1,862.52 acres owned and used for transportation purposes \$236,689.65."

There was also included in said alleged tentative valuation on account of 16.42 acres in vacated streets an additional \$10,403.40. There was also

Jointly used lands omitted.

Erroneous Classification.

Figures too low even on Commission's basis.

included on account of said 75.87 acres (erroneously classified as non-carrier lands) the additional sum of \$8,619.40, making a total of \$255,712.45.

The statement above quoted from said notice does not indicate what the figures therein are intended to show.

The carrier alleges that the value for general, not including railway, purposes of the carrier and non-carrier lands of this carrier, including all areas in streets and highways which are used by the carrier excepting the areas in streets and highways so used which are not referred to or included in said alleged tentative valuation was on valuation date not less than \$279,000.00, without allowing or including therein any sum or amount on account of improvements or damages or other elements for which the carrier is required to pay when acquiring land for railroad purposes.

(k) The report of the land section of the Division of Valuation was not furnished to this carrier but it was furnished a statement compiled therefrom, and the carrier assuming that the land section followed the "Instructions and Forms pertaining to Land Appraisals" promulgated and approved by the Director of date, June 10, 1915, alleges:

(1) That in the alleged tentative valuation no attempt was made to ascertain the true present value of the carrier's lands which are owned or

Commission did not ascertain present value of land.

used for its purposes as a common carrier, and that the figure included in the report applies only to a part of the lands owned *and* used by it and is very much less than the present value on valuation date of the lands to which it applies, and that the lands owned or used by this carrier on valuation date for its purposes as a common carrier—exclusive of the lands used by it but not owned (except industrial tracks), and which are referred to in item (2) of sub-division (h) of this paragraph—were of the value of not less than \$439,300.00, and that the lands which this carrier on valuation date held for purposes other than those of a common carrier were of the value of not less than \$13,000.00.

(2) That the alleged tentative valuation does not show or purport to show the cost of reproduction of said carrier lands or any part of the same, or the present cost of condemnation and damages, or the present cost of purchase and damages, and the carrier avers that on valuation date each of such costs was not less than \$439,300.00, excluding from consideration all the land referred to in item (2) of sub-division (h) of this paragraph, except the industrial tracks.

(3) The figures reported as "present value" of the carrier's lands in the statement compiled from the report of the land section above referred to were arrived at by applying to the land of the

Land "Costs" not reported.

Items of cost disregarded.

NOTE.—Italics ours.

carrier an alleged market value for general, not including railway, purposes of alleged similar adjoining and adjacent lands, and nothing whatever was allowed on account of items of cost or expense which the carriers must pay to obtain land for railroad purposes and which would have to be paid in case of reproduction of this carrier's lands, rights of way and terminals, to wit:

Damages to the other property of the owner from whom the land is acquired;

Cost of buildings and other improvements on the land acquired;

Damages resulting to the property of others;

Cost of removal and relocation of buildings and other structures not purchased;

Payments for relinquishment of cattle passes and other rights;

Taxes accrued and assumed at time of purchase;

Ditches for waterways;

Abstracts;

Appraisals;

Arbitrators' fees in condemnation cases;

Commissions paid;

Right of way agent's compensation;

Condemnation expenses, including Court costs (such as cost of surveys, maps, expert witnesses, jury fees, clerks' fees, etc.), and special counsel fees;

Recording fees, and many other items of expense necessarily incurred.

(4) The value of similar adjoining or adjacent lands sought to be ascertained by the Commission was arrived at (at least so far as the instructions and our present information indicates) by a consideration *only* of the present uses to which such adjoining and adjacent lands are devoted, and of uses for which there is a present need or demand.

In the valuation of carrier lands, the same must be considered to be available, fit and needed for railroad purposes, and consideration must be given to the value of the same not only for the uses to which they are presently put but also for all uses for which the same are available, fit and needed, or likely to be needed in the reasonably near future.

The methods followed by the commission exclude from consideration all elements of value which have resulted from railroad uses, and from size, shape and continuity of the terminal and right of way lands of the company.

(5) That the method of ascertaining "the market value of similar adjoining and adjacent lands" was erroneous and insufficient; the scope of the inquiry was too narrow even for the determination of the present value of such adjoining and adjacent lands; it does not appear what consideration, if any, was given to the character of buildings and improvements, or to the rental value of the land, or to the

Available
uses not
considered.

Com-
mission's
investigation
too narrow.

NOTE.—Italics ours.

prices at which the same are held and offered for sale.

The Form No. 502, referred to in the Instructions of the Supervisor of Land Appraisals, does not provide for any description of the lands concerning which opinion is taken, and does not indicate the general extent of the same; it does not provide for any indication as to whether the opinion is taken concerning adjacent lands or concerning adjoining lands; it does not provide for any indication, and the instructions do not show whether the value concerning which opinion is taken is to include or exclude the value of fencing, ditching, tiling, buildings, or other improvements, crops, trees, or timber which may be on the land.

The ascertainment of value is not controlled by artificial rules. It is not a matter of formulæ, but must be a reasonable judgment having its basis in a proper consideration of all relevant facts.

The following of the rules laid down in the Instructions of the Supervisor of Land Appraisals is quite certain to result in a mechanical process like the application of a formula.

Adjoining lands are frequently, indeed generally, parts of original tracts which were intersected by the line of railroad. These parts were damaged and relatively large amounts were recoverable on account of such damages. In so far as the value of adjoining lands, which were damaged by the taking of the right

of way strip and by the construction and operation of the railroad, is used by the Commission the resulting figures are erroneous. Such figures may not safely be used even for the taking of the first step toward the ascertainment of present value or present cost of acquisition.

(6) The experience of this carrier and of all other carriers was ignored and representatives of the Division of Valuation were not permitted to take the same into consideration or make any use thereof.

There was no co-operation between representatives of the carrier and of the Division for the ascertainment of facts necessary to be considered in the ascertainment of the value of the carrier's land.

The figures reported as the present value of the carrier's land in the statement compiled from the report of the land section above referred to were arrived at *ex parte*, and, as the carrier understands, by the application of formulæ and not by the exercise of judgment. The carrier was not permitted to express to the Government representatives making the alleged valuation its opinion as to the value or reproduction cost of its own lands.

28.

The Accounting Report or the alleged tentative valuation is not and does not purport to be or to contain a true report of the actual disbursements and receipts of the carrier, and is not and does not

Carriers' experience ignored.

Carrier was not given a hearing.

Accounting report excepted to.

purport to be a true and correct report of the syndicating, banking and other financial arrangements under which stocks and bonds and other securities were issued by the carrier, nor of the actual expenditures made by the carrier.

The report appears to be an attempt to rewrite the accounting records of the carrier and does not state the actual expenditures of the carrier; it is not a true summary or synopsis of the actual financial and accounting history of the carrier, and it does not disclose, nor can there be determined therefrom, the true original cost to date of all the property owned or used by the carrier for its purposes as a common carrier.

WHEREFORE, the carrier—saving and reserving the right hereafter to set forth other objections and exceptions, and more particularly to specify its claims—now protests against the approval, allowance, or publication of said alleged tentative valuation as a final valuation of its property, and it prays that the Commission shall fix a time for hearing this carrier's protest and its evidence, claims, and arguments in support thereof.

TEXAS MIDLAND RAILROAD.

By L. W. WELLS,

Assistant to the General Manager and Chief Engineer.

NOVEMBER 27, 1916.

MSH 21452

**END OF
TITLE**